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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUBCOMMITTEE

Thirty-fifth session

SUMMARY RECORD OF THE 590th MEETING

Held at the Vienna International Centre, Vienna,
on Tuesday, 19 March 1996, at 10 a.m.

Chairman: Mr. MIKULKA (Czech Republic)

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The meeting was called to order at 10.15 a.m.

PARTICIPATION BY NON-MEMBER STATES *(continued)*

1. **The CHAIRMAN** said that Malaysia had applied to participate in the work of the Subcommittee. As the granting of observer status was a prerogative of the Committee on the Peaceful Uses of Outer Space, he suggested that the Subcommittee should not take a formal decision on the matter, but that, if there was no objection, the representative of Malaysia should attend the Subcommittee's formal meetings and, if he wished to make a statement, seek permission from the Chair.

2. *It was so decided.*

GENERAL EXCHANGE OF VIEWS *(continued)*

3. **Mr. FIUZA NETO** (Brazil) approved the decision to leave the consideration of agenda item 3, "Question of review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space", to the Scientific and Technical Subcommittee, with which that matter should remain pending new technological developments. The time thereby saved could be used to address the other substantive issues on the agenda or to deal with the Legal Subcommittee's working methods. The exchange of views at the Subcommittee's thirty-fourth session on agenda item 4, concerning definition of outer space and utilization of the geostationary orbit, had provided the basis for further work: the geostationary orbit was a limited natural resource and the Subcommittee's discussion of it should reflect that reality. His delegation hoped that the answers provided to the questionnaire on possible legal issues with regard to aerospace objects (A/AC.105/607, annex I, appendix) would generate progress in discussion of the issues raised by the Russian working paper on the subject (A/AC.105/C.2/L.189).

4. Although the question of space debris was being dealt with in the Scientific and Technical Subcommittee, the Legal Subcommittee should also be in a position to address the issue. An open-minded discussion could lead to the establishment of a parallel track for handling the matter, involving the two Subcommittees. Public awareness of the issue would grow and the Subcommittee should make progress on it in anticipation of that. With regard to agenda item 5, concerning outer space benefits, the informal working paper which had emerged at the previous session (A/AC.105/607, annex II, appendix) was virtually the sum of the earlier papers tabled by his own and other developing countries and by France and Germany (A/AC.105/C.2/L.182/Rev.2 and A/AC.105/C.2/L.197 respectively), and could constitute a useful starting-point for discussions at the current session. Delegations should demonstrate flexibility on the subject in order to achieve a consensus.

5. As to the Subcommittee's working methods, Brazil fully agreed with the measures adopted to guarantee effective utilization of United Nations services, and would support every effort to make the best possible use of the time allotted, but would oppose attempts to reduce the duration of the session without proper consideration of the substantive or organizational issues that were of concern to a significant number of the Subcommittee's members. Any decision to reduce the duration of the Subcommittee's work would have to be taken on an ad hoc basis. Some delegations had stated at its thirty-fourth session that the burden of justifying the inclusion of new items on its agenda should fall exclusively on the shoulders of those proposing them; Brazil, however, considered that it should be a joint effort, particularly because the information available on some topics was scarce. Alternatively, the Secretariat should be asked to investigate

some of the avenues that were open to the Subcommittee in regard to new items. Member States should be asked to coordinate their decisions on the subject with the Secretariat.

6. **Mr. SOKOLOV** (Russian Federation) said he hoped that the current session would give a new impetus to the question of delimitation of outer space. A notable move towards enhancing the criteria for dealing with the issue had been the questionnaire on aerospace systems. The Subcommittee should make every effort to secure progress in regard to the legal aspects of the operation of aerospace systems with a view to bringing together the opinions of individual States in a single comprehensive document as soon as possible. The Russian Federation advocated dialogue on the various aspects of the utilization of the geostationary orbit; the working paper submitted by Colombia on that subject (A/AC.105/C.2/L.200) raised a number of very important questions and its recommendations required careful consideration.

7. His delegation supported the view expressed by the Scientific and Technical Subcommittee at its thirty-third session that further expert consideration be given to the scientific and technical aspects of space debris. Noting with satisfaction the cooperation that existed between the Inter-Agency Space Debris Coordination Committee (IADC) and the Scientific and Technical Subcommittee, he said that the Legal Subcommittee should not embark upon consideration of the legal aspects of space debris before acquiring comprehensive data regarding its technical aspects. Moreover, his delegation agreed that at the present time the revision in the Subcommittee of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space was not warranted.

8. With regard to the legal aspects of the utilization of outer space for the benefit and in the interests of all States, taking into particular account the needs of developing countries, the document submitted at the previous session by the Chairman of the Working Group (A/AC.105/607, annex II, appendix) was a good example of the approach which the Subcommittee should adopt to the solution of problems. More work needed to be done on the document to ensure progress.

9. As far as the Subcommittee's working methods were concerned, his delegation welcomed the efforts of the Chairman and Secretariat to introduce the maximum amount of flexibility into the manner of consideration of agenda items. The search must continue to find new ways of solving problems in that area, bearing in mind that responsibility for the Subcommittee's effectiveness lay at least as much with delegations as with the Secretariat.

10. **Mr. SINGH** (India) said that the rapid development of space technology and its applications necessitated quicker progress on the legal aspects of preservation of the space environment and the equitable use of space resources, as well as on intellectual property rights relating to space applications and on the principles governing international cooperation and the principles for technology transfer.

11. Until a consensus was reached in the Subcommittee on the need for and the scope of revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space, those principles should be observed and implemented by the international community. India considered that any revision of the Principles should aim at the better implementation of the agreed safety standards, and not at their dilution. States currently using nuclear power sources in outer space should inform the Committee on the Peaceful Uses of Outer Space and the United Nations of the action they were taking to comply with the Principles.

12. The definition and delimitation of outer space and the use of the geostationary orbit were subjects of fundamental importance upon which the Subcommittee had yet to make any substantial progress. It was

clearly necessary to define outer space and delineate it from airspace, as well as to clarify the scientific and technological aspects of aerospace objects.

13. The urgency for the Subcommittee to make substantial progress on the subject of outer space benefits could not be overemphasized. Several States, particularly the developing countries, encountered many obstacles in gaining access to outer space and taking full advantage of space technology for their socio-economic and cultural development. International measures to strengthen the implementation of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies should be encouraged further, together with international cooperation in the development in the States concerned of indigenous capacities for conducting peaceful activities in outer space that would meet their priority needs. In that spirit, India strongly supported various of the proposals before the Subcommittee on outer space benefits. It was also gratified that the General Assembly had endorsed the proposal to hold a third United Nations Conference on the Peaceful Uses of Outer Space before the turn of the century and it hoped that a detailed agenda for the conference would be settled soon.

14. His delegation shared the concern expressed by other States regarding the growing quantity of debris in outer space and the urgent need to continue studying the problem, as well as to develop suitable measures to protect space objects and humans in outer space from collision with space debris.

15. **Mr. TREMAYNE-SMITH** (United Kingdom) welcomed the decision not to reconvene the working group on nuclear power sources during the current year. The United Kingdom considered that the functional definition of space was acceptable and that the International Telecommunication Union was the appropriate body to cover the management of the geostationary orbit. His delegation did not believe there was a need for prescriptive measures or principles regarding space benefits, or that the Subcommittee should deal with the matter of space debris at present. The United Kingdom would support a move to keep the Subcommittee's records to a minimum consistent with the work in hand and it welcomed the idea that the duration of the present session should be two weeks. It had no suggestions for future subjects to be considered by the Subcommittee and at present saw no need to extend the scope or range of topics which the Subcommittee covered. It might nevertheless be appropriate to remove a subject from the current agenda from time to time and perhaps replace it with a more acceptable item.

16. **Dr. HUANG Huikang** (China) said that, since the development of space technology and the conduct of space activities could not be separated from the establishment of a sound legal space order, the elaboration of international space law must be accelerated. The present favourable international climate provided the Subcommittee with a good opportunity for doing that. China approved the decision taken by the Scientific and Technical Subcommittee at its thirty-third session that, at present, revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space was not warranted, as well as that body's decision that the subject should remain on its agenda.

17. The definition and delimitation of outer space was a complex political, security and technical matter calling for patient and thorough consultation. The replies to the useful questionnaire on legal issues related to aerospace objects should provide the basis upon which the Subcommittee would decide how to continue its deliberations. The geostationary orbit was a limited resource and ways should be explored of improving its present utilization through concerted action by all States. The legal regime governing the geostationary orbit should be based on the principles of equality, economy and efficiency, taking into account the interests of all countries, especially the developing countries, and it should be coordinated with the relevant procedures

of the International Telecommunication Union. It was the task of the Legal Subcommittee to prepare such a regime and China looked forward to further progress in that regard at the current session.

18. As to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries, the working papers submitted at the Subcommittee's thirty-fourth session by Brazil and other developing countries (A/AC.105/C.2/L.182/Rev.2) and by France and Germany (A/AC.105/C.2/L.197) had demonstrated that the positions of the developed and developing countries were becoming closer. There was now a sound basis for further constructive consideration of the subject at the present session.

19. On the question of the Subcommittee's working methods, while China had no objection to the use of unedited transcripts for the meetings of the Committee itself, caution should be exercised about extending that practice to the Subcommittee. The duration of the Subcommittee's meetings should be considered in an integrated manner together with issues such as its present and future role and its efficiency.

20. His Government welcomed experts and officials from all countries to the thirty-ninth International Colloquium on the Law of Outer Space to be held at Beijing, China, in October 1996.

21. **Mrs. ÜNEL** (Turkey) said that her delegation agreed with the decision to suspend consideration of agenda item 3, relating to nuclear power sources. However, she felt that the question of review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space merited special attention, in view of the developments which had taken place under the auspices of the International Commission on Radiological Protection and the International Atomic Energy Agency, as well as the emergence of new factors such as the potential impact of space debris. Her delegation attached great importance to the protection of the space environment and welcomed the holding, during the present session, of the International Institute of Space Law (IISL)/European Centre for Space Law (ECSL) symposium on that subject.

22. With regard to the utilization of the geostationary orbit, she hoped that the document submitted by the delegation of Colombia (A/AC.105/C.2/L.200) would represent a solid basis for consensus. Closer collaboration was needed with the International Telecommunication Union (ITU) because of the conflicting views of delegations concerning its role in that respect. Consensus on the subject would be more readily achieved in the Subcommittee by submitting to ITU a list of questions concerning points on which unanimity was lacking.

23. Her delegation confirmed its approval of the arrangements made at the previous meeting for the work of the present session.

24. **Mr. KIM** (United States of America) said the Subcommittee could play a beneficial role in promoting international cooperation in outer space. It should not consider matters which would needlessly complicate efforts to improve that cooperation. It should adopt a systematic approach to its work, with a view to promoting progress, and avoid seeking to create new legal regimes for which there was no practical or legal need and which were bound to stir up controversy. The Subcommittee should clearly identify the need for any new pronouncements and should carefully assess the appropriateness of adding items to its agenda.

25. The question of space debris should not be handled by the Legal Subcommittee, nor should the Subcommittee develop new legal norms for space debris, in view of the many scientific and technical aspects

of that issue to be addressed in the Scientific and Technical Subcommittee. A third United Nations Conference on the Peaceful Uses of Outer Space was neither necessary nor appropriate, given the present climate of international cooperation and the financial stringency in the United Nations. There were alternative means of achieving the goals involved. In conclusion, he welcomed the efforts being made to improve the efficiency of the Subcommittee's procedures.

26. **Mr. HECKER** (Germany) said that his delegation had been constructively involved in the discussions at the previous session and that his Government had replied to the questionnaire on possible legal issues with regard to aerospace objects. Concerning agenda item 5, on outer space benefits, the delegations of France and Germany would be submitting a revised version of the working paper introduced the previous year as document A/AC.105/C.2/L.197. He hoped the new paper would enable further progress to be made on that subject.

27. **Ms. DIACONESCU** (Romania) welcomed the progress made in the Subcommittee on the definition and delimitation of outer space, including the utilization of the geostationary orbit. In her country's view, the geostationary orbit was a limited natural resource to which all countries, including those which did not yet have the capacity to launch satellites, should have access. The Subcommittee's consideration of ways and means to ensure the rational and equitable use of the geostationary orbit need not create problems for the International Telecommunication Union, although the latter had a certain responsibility for regulating its use, especially with regard to telecommunications. The work of the two bodies on that question should be regarded as complementary.

28. Delegations should thoroughly review the various documents submitted in connection with agenda item 5, relating to outer space benefits, in order to determine the best means of guaranteeing the equitable exploration and utilization of outer space, and should be prepared to enter into negotiations with a view to reaching a shared conclusion on the matter. It would be useful if the item could be considered on the basis of a single working paper, drafted on a continuing basis to reflect the interests and concerns of all States.

29. Since the protection of the space environment would undoubtedly be advanced through the work of the Scientific and Technical Subcommittee, the question of space debris merited inclusion on the agenda of the Legal Subcommittee. As to its working methods, her delegation would welcome consultations with a view to clarifying the problems involved and reducing the length of the present session.

30. **Ms. VENTURINI** (Italy) agreed that the length of the Subcommittee's sessions should be shortened — perhaps to even less than two weeks, in order to conform with the pattern of meetings of United Nations bodies in Vienna. The practice of holding a longer session should be resumed only if new substantive items were included on the agenda.

31. The Scientific and Technical Subcommittee had made very satisfactory progress at its thirty-third session, especially on the question of space debris. A number of States, including Italy, were organizing programmes relating to the acquisition and understanding of data on the space debris environment. Industry was showing increasing awareness of that issue, as evidenced by the IISL/ECSL symposium. Those trends suggested that the Legal Subcommittee might well have to deal with the question of space debris in the not too distant future.

32. **Mr. VELAZCO SAN JOSE** (Cuba) said that the economy measures instituted as a result of the deep-seated financial crisis in the United Nations were affecting without distinction Member States which paid

their contributions and those which did not or could not. Attempts were being made, as part of the reform process, to do away with the Committee on the Peaceful Uses of Outer Space and incorporate its field of activity into the work of other United Nations bodies. He hoped those attempts would not be successful and that financial stringency would not have any serious impact on the work of the Office for Outer Space Affairs. His delegation agreed in principle with the arrangements announced by the Chairman at the previous meeting for the work of the present session and it believed in the need for flexibility in the Subcommittee's procedures. However, acceptance of the need to make proper use of the time available at the present session should not prejudice the arrangements for future sessions of the Subcommittee.

33. His delegation approved the decision to leave item 3, concerning nuclear power sources, to be dealt with by the Scientific and Technical Subcommittee. Concerning item 4, definition and delimitation of outer space, a productive exchange of views had taken place at the Subcommittee's previous session. His delegation took the view that the geostationary orbit should be regarded as a limited natural resource. As a sponsor of the proposal in document A/AC.105/C.2/L.182/Rev.2, his delegation endorsed the statement made by the representative of Brazil.

34. **Mr. KOVACS** (International Telecommunication Union) introducing the thirty-fifth report of the International Telecommunication Union (ITU) on telecommunication and the peaceful uses of outer space (A/AC.105/634), said that the past year had been extremely challenging, with an upsurge in interest in space-related communications, continuing technological developments, a changing administrative and financial environment and a growing demand for spectrum and orbit utilization.

35. Turning first to international regulation of the use of orbit/spectrum resources, he said that the regulatory basis was to be found in ITU's amended Constitution and Convention, which had entered into force on 1 January 1996. Article 44 of the amended Constitution stipulated that in using frequency bands for radio services, member administrations should bear in mind that radio frequencies and the geostationary-satellite orbit were limited natural resources which must be used rationally, efficiently and economically, so that countries or groups of countries could have equitable access to both, taking account of the special needs of the developing countries and the geographical situation of particular countries. The Radio Regulations, a binding international treaty setting out the procedures for all radio communication services, contained further detailed regulations and procedures governing orbit/spectrum use. The principles of efficient use of the orbit and equitable access to it had been a major concern of ITU's member administrations. Recent rapid developments in telecommunication services had brought an increasing demand for spectrum/orbit usage, raising the possibility of substantial changes in allocation practices, due among other things to technological progress and the increasing use of space techniques in radio communications and to political, social and structural changes and the resulting liberalization of telecommunication services.

36. Because of those developments, the Plenipotentiary Conference of ITU (Kyoto, 1994), in resolution 18, had called for an in-depth review of spectrum/orbit resource allocation procedures. The aims of the review were, among others, to ensure equitable access to resources, match coordination procedures to the needs of member administrations and ensure linkage between those procedures and commitments to take up networks. As part of the review, issues under study by ITU included the reservation of orbit capacity without actual use, which contributed to congestion; the uncoordinated use of spectrum and orbital resources for satellite launching and repositioning; the lack of adequate mechanisms for dispute resolution in a situation in which complex satellite systems proliferated in an almost continuous series of inter-system coordination; the efficient use of orbit and spectrum resources where conflicts emerged in particularly valuable orbital segments in which spectrum utilization could be enhanced by applying advanced technologies; and finally

the problem of equitable access to orbit and spectrum resources. The spectrum covered by existing orbit position plans was largely unused, owing to technical and administrative constraints. During 1996 ITU's various bodies would seek solutions to all those problems and its final report would be submitted to the 1997 World Radiocommunication Conference.

37. After outlining the main aspects of the work of the 1995 World Radiocommunication Conference, he said that the 1997 Conference would undertake a revision of the Broadcasting-Satellite Service Plan, review activities under resolution 18 of the Plenipotentiary Conference (Kyoto, 1994) and deal with such items as the implementation of the Global Maritime Distress and Safety System (GMDSS) and frequency allocation issues for space services, in particular the Earth exploration-satellite service.

38. A new type of ITU gathering, the World Telecommunication Policy Forum, would meet during the four-year period between Plenipotentiary Conferences to exchange views and information on broad telecommunication policy issues, technological advances, service options and opportunities, infrastructure development and financial and business considerations.

39. The second World Telecommunication Development Conference would be held in Malta in 1998. ITU had been instrumental in the establishment of the World Telecommunication Organization (WorldTel), a cooperative body financed by private investors from industrialized countries which assisted developing countries in providing access to telecommunication facilities for a large segment of their population through the introduction of cost-effective technologies and the creation of a liberal economic environment.

40. The ITU report also contained information on new satellite projects submitted to the Union under the international regulations, as well as lists of geostationary and non-geostationary space stations in different stages of the coordination procedure, and information on the status of ITU telecommunication studies and standards and on the technical cooperation activities of the Telecommunication Development Bureau.

MATTERS RELATING TO THE DEFINITION AND DELIMITATION OF OUTER SPACE AND TO THE CHARACTER AND UTILIZATION OF THE GEOSTATIONARY ORBIT, INCLUDING CONSIDERATION OF WAYS AND MEANS TO ENSURE THE RATIONAL AND EQUITABLE USE OF THE GEOSTATIONARY ORBIT WITHOUT PREJUDICE TO THE ROLE OF THE INTERNATIONAL TELECOMMUNICATION UNION (*continued*) (A/AC.105/607 and Corr.1, A/AC.105/635, A/AC.105/637; A/50/20)

41. **Mr. REY CORDOBA** (Colombia) introduced a working paper (A/AC.105/C.2/L.200) submitted by his delegation with regard to the utilization of the geostationary-satellite orbit. The document adopted a different approach from that reflected in his delegation's previous paper on the subject (A/AC.105/C.2/L.192), submitted in 1993, and took account of the views expressed on the subject by the relevant Working Group, the Subcommittee itself and the Committee on the Peaceful Uses of Outer Space. In view of the status of the International Telecommunication Union (ITU) as an important authority for the Subcommittee on the item under discussion, he was gratified to note that its thirty-fifth report on telecommunication and the peaceful uses of outer space (A/AC.105/634) adopted a similar position to that contained in his delegation's new working paper. The paper was not structured along the lines of a document for submission to the United Nations General Assembly. It was simply meant as a basis for discussion in the Subcommittee and the Working Group, and perhaps as a stimulus to other delegations to present ideas of their own. It omitted statements of what appeared to be self-evident principles and sought to avoid unnecessary arguments

regarding, for example, the definition of the geostationary orbit. That approach was reflected in its unpretentious title: "Some considerations concerning the utilization of the geostationary-satellite orbit".

42. Section I of the paper quoted various paragraphs of General Assembly resolution 50/27 which demonstrated irrefutably the competence of the Committee on the Peaceful Uses of Outer Space and its subcommittees to discuss the subject of the geostationary-satellite orbit without prejudice to ITU's role in the matter. The resolution placed emphasis on the rational and equitable use of the orbit and the need to pay special attention to the concerns of the developing countries, and made a favourable reference to deliberations which had taken place in the Subcommittee on the basis of recent proposals, namely those contained in his delegation's previous working paper and referred to in the report of the Committee on the Peaceful Uses of Outer Space on its thirty-eighth session (A/50/20, para. 118).

43. His delegation considered that any draft text prepared by the Subcommittee on the utilization of the geostationary orbit should mention chapter VII, article 44, No. 196, paragraph 2, of the Constitution of ITU, which indicated that the geostationary-satellite orbit was a limited natural resource and must be used rationally, efficiently and economically, and that countries or groups of countries must have equitable access to it, taking into account the special needs of the developing countries and the geographical situation of particular countries. Any such text should also refer to the guidelines established by ITU through the Radio Regulations. In that connection the planned frequency bands and services for which countries had been allotted orbital positions at various ITU conferences should not be affected by any new regulations.

44. More precise criteria were needed with respect to the many still unplanned frequency bands and services, with regard to which access to orbital positions was at present provided on a "first come, first served" basis. That procedure was unfair when it involved the possibility of access to a specific orbital position at the same time and with the use of the same frequencies by a developing country and a developed country, or by a country that as yet had no access to the orbit as against one which had. Coordination procedures existed to resolve such problems, but they could impose costly operational limitations that were to the detriment of developing countries. A further complication arose from the uncoordinated use of spectrum and orbit resources by satellites launched or repositioned before the coordination process was properly concluded. His delegation believed that the principles set out in chapter VII of the ITU Constitution should be applied to the frequency bands and services not yet planned by ITU, and that any relevant regulations should simplify the coordination process by promoting registration of the satellites of developing countries, or of countries that had not yet had access to the orbit in preference to those already using it. Moreover, any text prepared by the Subcommittee should include a provision on space debris which interfered with the effective use of the orbit.

45. His delegation therefore proposed that the Subcommittee should recommend the observance of the following principles for the utilization of the geostationary orbit. First, in any coordination process necessitated by radio-electronic interference in respect of bands and services using geostationary satellites and not planned by ITU, the countries involved should take into account the fact that access to the geostationary orbit must be equitable, and consequently that when a developed and a developing country had equal claims to access to the same or neighbouring orbital positions, or when a country that already had access and a country that had not yet had access had equal claims, the developed country or the country which already had access should give the other country every possibility of acceding to the desired orbital position and frequency with the minimum possible operational restrictions. Second, the claim of countries to use

frequencies and occupy geostationary orbital positions in such cases should be exercised as set forth in the ITU Radio Regulations and, in any event, account should be taken of the provisions of resolution 18 of the Plenipotentiary Conference of ITU (Kyoto, 1994). Third, the satellite "launching State", as defined in the Convention on Registration of Objects Launched into Outer space and the Convention on International Liability for Damage Caused by Space Objects, should use its best endeavours to remove space debris and spent satellites from the geostationary satellite orbit to disposal orbits shortly before the end of the useful life of a satellite in order to ensure effective and economical use of the orbit.

The meeting rose at 12.40 p.m.